

# **FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION**

*(Incorporating Fish Hoek, Clovelly and Sun Valley)*

~~Central Circle, Fish Hoek 7975~~

Web: <https://www.fhvrta.org.za/> Facebook: [www.facebook.com/FHVRRA/](http://www.facebook.com/FHVRRA/)

Heritage Western Cape: Conservation Body

**TO:** CLLR AIMEE KUHL [aimee.kuhl@capetown.gov.za](mailto:aimee.kuhl@capetown.gov.za)

**SUBJECT: REQUEST FOR A COPY OF THE TERMS AND CONDITIONS FOR THE  
LEASE OF ERVEN 16033 & 10699, FISH HOEK**

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Peter Scott as Fish Hoek Valley Ratepayers & Residents Association (FHVRRA) ward 64 committee representative requested a copy of the lease terms for the lease auction for the Galley / Bistro restaurant, references 16033 & 10699 scheduled for 23 November 2023.

The lease of the Galley restaurant has long been a contentious issue among the Fish Hoek community. There are those that remember how the current lessees turned around a loss making business. Many appreciate the contribution these lessees have made to the Fish Hoek community over the last more than twenty years and many of our residents enjoy the fellowship at the Galley.

However, for several years concerns have been expressed about several aspects of the Galley lease, namely:-

- The rental rate in contrast with other similar seafront prime City sites;
- Restraint of trade in the greater beach area;
- Parking allocation; and
- The delay in going to tender (now several years) after the original lease agreement expired.

These concerns led to allegations of impropriety and claims that the monopoly of a prime position on Fish Hoek beach led to poor food and service.

Solutions proposed were more competition by changing the lease terms and FHVRRA wrote to the relevant property management officials of CoCT requesting that a tender for a new lease be issued without further delay and that the inputs of our community be taken into account when drafting the terms of the new lease. (copy attached).

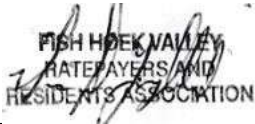
The information we have gleaned from publications about the auction appear to indicate that the lease is for both erven for 20 years with an option for a 10 year renewal. There are no details of the terms and conditions of the lease, in particular whether the proposals of our community have been incorporated. We have tried to search the CoCT website for the terms and conditions of the lease, but to no avail.

We believe that a lease on the same terms and conditions as the previous lease will meet with great opprobrium among our community and will not be in the best interests of Fish Hoek.

Are you able to provide us with details of the lease? If so, we would appreciate it.

## ATTACHMENT

- Galley\_Lease\_PPP.pdf

NAME & SURNAME	Brian Youngblood, Chair: Fish Hoek Valley Residents and Ratepayers Association (FHVRRA)
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SIGNATURE	
DATE	2 November 2023

# **FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION**

*(Incorporating Fish Hoek, Clovelly and Sun Valley)*

**P.O. Box 22125, Fish Hoek 7974 – Tel: 021 782 1950**

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**TO: SALLY CHAMBERS, SPO: DISPOSALS  
ASSETS AND FACILITIES MANAGEMENT  
PROPERTY MANAGEMENT/ PROPERTY ACQUISITIONS & DISPOSALS  
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**SUBJECT: PROPOSED LONG TERM CLOSURE AND LEASE OF COUNCIL'S  
IMMOVABLE PROPERTY, ERVEN 16033 & 10699, FISH HOEK, GALLEY  
RESTAURANT**

**Due: 16:00 HOURS ON 8 MAY 2018**

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## **1. DISCUSSION**

In terms of Section 17 of the Local Government: Municipal Systems Act, Act 32 of 2000, the public and interested parties or groups are given the opportunity to submit comments, input or recommendations on the proposed long term closure and lease to the municipality of erven 16033 and 10699. We, the Fish Hoek Valley Ratepayers and Residents Association do not object to the closing and leasing of these erven: Actually, we wish this process to proceed with all due haste. The following are comments only to address our concerns as we have not seen the contract wording for the new lease.

### **Comments**

Firstly, we wish the tender process to be fair, equitable, transparent, competitive and cost effective in terms of Section 38 (a) (iii) of the Public Finance Management Act #1 of 1999. Thus, we do not expect any favouritism to be shown to the incumbent lessee in the awarding of the related tender. For years the restaurant was neglected and in breach of the maintenance tenants of this lease contract, but has recently, finally received some attention. This should be seen as a fulfilment of an obligation and not as an expectation of continuity of lease.

To Item 2 of the Information Statement in terms of Regulation 34 (3) (b) of the Municipal Asset Transfer Regulations R.878 regarding the maintenance, upkeep and the securing of the property, we agree that the public playground in front (now incorporated) and public toilets behind these erven properties be included as proposed in the Council minutes of 31 January 2018, item C 12/01/18, MC 09/01/18. The area to the east of the covered area along line ED on your drawing LIS 1721v0, see Annexure A, and depicted as a "play area" is not being used as a play area, but has been annexed by the current lease holder to accommodate additional tables for business and income. This area is either to be incorporated into the new lease area with the baseline lease amount being duly adjusted or it is to revert back to its original intended use being that of a play area for toddlers with restaurant tables etc. being removed away from the area. The lessee should be responsible for the maintenance of the play area to the north of point D and the "grassed" area to the south of line LK all as depicted on drawing LIS 1721vO. We support the, "lessee will be entitled to use the site for restaurant purposes

only.” This would have been a great opportunity to have had the public toilets made wheelchair access friendly.

### **Market-related Value**

To Item 3 we would also like to see the City receive a market-related lease income from the use of the property as well as rates and taxes, but forthwith. It is a travesty to extend the current terms and conditions of the expired lease and for the City to continue losing out on the true market value of this property. We believe the 2016-10-03 evaluation performed on a property value of R11,120,000 resulting in a lease rate of R140 / square metre for R113,800 / month excluding VAT, rates and taxes based on 927 square meters of restaurant and 169 square meters of outdoor seating area (for 1096 square meters, which is less than the 1295 square meters of combined erven), escalating 8% per annum (about R130,000 in today's rands **plus** rental for the missing 199 square meters).

It is anticipated that the proposal call will attract a number of bidders which raises the risk of the lease being awarded to a “high end” entrepreneur who could price the restaurant out of the reach of locals many of which are retired persons with limited incomes. A balance needs to be struck between attracting international tourists to Fish Hoek and the serving of the local community. It is suggested that this concern be incorporated in the lease documentation with bidders being required to comment on how they propose dealing with this concern. Perhaps this should be added to the proposed functionality scoring, see below.

The intention that the lease generate a market related income is supported, but it is respectfully submitted that this can only be achieved by requiring bidders to “tender” a lease amount with the baseline minimum amount being provisionally recorded in the lease proposal as R 113 800 (duly corrected to correlate with the lease area) per month (excluding VAT, rates and taxes) and escalated at 8% per annum. The option of a lease amount based on a percentage of turnover with a minimum of R 113 800 per month (duly corrected) and duly escalated may be in the Council's best interest as is done in retail shopping centres.

Water tanks have been installed to the south of line LK depicted on drawing LIS 1721v0, see Annexure A. The lease area must be amended to accommodate these tanks and the benchmark lease amount needs to be adjusted accordingly.

### **Previous Special Privileges**

The following previous special privileges provided to the lessee are **not** to be maintained.

- Exclusivity trading rights for the beach are not to be enshrined in the lease. The previous lease's Section 10 stipulated that the Lessor shall not allow any similar business within 200m of the leased premises. We prefer to not see this anti-competitive business practice being continued.
- Exclusive reservation parking rights for the lessee which should not be allowed, such as cordoning off the tour coaches / bus parking area for the lessee's exclusive use as is practiced today, although not contained in the existing lease. What should happen is a bus “drop off and collect” area be designated close to the restaurant. Buses, after dropping off their passengers, must be moved to the vicinity of the public ablution block at the north end of the life savers clubhouse. Later, the busses can collect their passengers at the “drop off and collect area”. The lease should include a condition requiring the submission of a “tour coach” parking management plan to include the redesign of the current area reserved for coaches for general parking.
- Please note that the original right of first refusal to insist that should any reasonable offer be made that the lessee be allowed to equal and meet the same terms, fell away with the expiry of this lease and relevant legislation subsequent to 1995.

## **Food Rating**

Due to the prime location of the beachfront restaurant, this should be the showcase for Fish Hoek. However, the restaurant only has a rating of 2.6 out of 5 on <https://www.zomato.com/capetown/restaurants/dish-langoustine?page=1>. We would like to see this rating improve to at least 3 (three).

## **Food Preparation**

The current practice, apparently, is to outsource the food preparation for tour groups on busses making reservations. The restaurant's kitchen may be inadequate for large groups all arriving at once. However, we would like the outsourcers to be located in the Fish Hoek Valley to increase local businesses.

## **Breach / Penalty Clause**

All tenders contain a standard breach of contract clause. What is needed is a penalty / breach clause for non-compliance with the lease conditions, such as the service level agreement (SLA). This is to include the cancellation of the lease for repeated contraventions of the SLA. See penalty and grief points in the Service Level Agreement Section of an IS&T Tender.

## **Tender Evaluation Criteria**

To avoid potential appeals against the award of the lease and objections, we would like to see included in the Tender, the following Bid Evaluation Criteria as well as the inclusion of a service level agreement (SLA). One section would include a mandatory section to which all successful tenderers must comply. Another section would include functionality scoring with a minimum requirement for a score of 65 points. Failing to meet the minimum functionality score would exclude them from further evaluation. This would eliminate chancers that are incapable or lack suitable experience, which would require a long battle to cancel the Tender and re-advertise. Then the usual price and BBEE scoring could be completed for recommendation to the Bid Adjudication Committee. See IS&T Tenders for suitable examples.

## **Assistance with SLA**

Please note that the Friends of Fish Hoek Beach gladly offer to assist with the measurement and reporting of the meeting of the service level measurements for the City.

## **2. RECOMMENDATIONS**

It is recommended that, for the reasons set out in this report that the following sections be included in the tender and for evaluation purposes:

### **Special Conditions of Tender**

- Any alterations, extensions or improvements to the existing buildings are to be pre-approved and must compliment the surrounds and to integrate with the natural and built environment;
- The lessee is to be responsible for the good upkeep and maintenance of the facility to include repair and maintenance of the public clock and abutting public benches. The benches need a coat of varnish now. The public clock hasn't been working properly for years, but actually has historical value to the valley as a wartime commemorative for locals to remember their loved ones still fighting or lost;
- The lessee to only utilise bio-degradable, environmentally friendly items:
  - in packaging of takeaways, i.e. no polystyrene or plastic cups or other containers
  - no plastic straws, no plastic eating utensils, etc

- In maintaining the public toilets behind the restaurant, the toilet area is to be kept clean; that lights are kept in working order and switched on; that the homeless do not occupy (as opposed to use) the facility; that public safety is ensured and locked only between closing of the restaurant and arrival of the first “A” Team swimmers (usually at 06:30 in summer or give a key to the “A” Team swimmers as done previously);
- A standard schedule for daily and annual permit tariffs is to be determined, promulgated and charged for entry of all private vehicles and busses to the beach area;
- The nearby play area and benches must be kept clean and clear of sand; and
- The nearby play equipment notice boards must be maintained.

We wish to see the following special conditions **excluded** from the tender:

- Exclusive trading rights disallowing any similar businesses nearby;
- Exclusive reservation parking rights for the lessee or cordoning off the tour coaches / bus parking area for the exclusive use of this restaurant. (Buses must observe the “drop off and collect area” conditions); and
- The right of first refusal to equal and meet the same terms of an alternative reasonable bid.

#### **Service Level Agreement (SLA)**

To be added to General Conditions of Contract:

- Each Service Penalty is made up of an accumulation of Grief Points.
- Grief Points are accumulated automatically by the City due to failures by the Supplier to meet Service Levels.
- Grief Points shall be allocated for each failure to meet any Service Levels in each Calendar Month.
- Each block of 15 (fifteen) Grief Points that is accumulated by the City in each month will constitute a Service Penalty, which may be claimed by the City. Consistently high monthly Grief Points over several months will be reviewed and consideration given to this constituting a Service Level Terminal Event.
- Before every monthly SLA meeting the Supplier will generate a report with all the details of the non-compliance of the service levels and the grief points that the City is entitled.
- The City may claim a Service Penalty by informing the Supplier at the SLA meeting or in writing that it is claiming the Service Penalty.
- Each Service Penalty which may be claimed will be 5% (five percent) of the monthly rental fee affected that the lessee must pay to the City per Service Penalty in addition to the monthly lease fee for the month in which the Grief Points were incurred.

<b>The Service</b>	<b>Service Level</b>	<b>Service Level Measure</b>	<b>Grief Points</b>
Monthly SLA report	The Supplier is to provide a completed SLA report monthly.	SLA report is complete and submitted on time	1 grief point for failing to supply monthly or incomplete

Public clock	Public clock not keeping time accurately	Public clock must be accurate to within 5 minutes per 24 hours	1 grief point for each five minutes out per every 24 hours
Abutting benches	State of abutting	Abutting benches need repair or maintenance	1 grief point for each month a bench needing repair or maintenance
Non-biodegradable items	Non-biodegradable items must not be used	Use of non-biodegradable items, such as plastic straws, plastic cup, plastic utensils, polystyrene cup	1 grief point for each order of non-biodegradable item
Public toilets	The public toilets must be kept clean	The public toilets were not kept clean	1 grief point for each toilet not found in a clean state
The homeless	The public toilets facility are there to be used by everyone	The homeless should use and not occupy the public toilets facility	1 grief point for each homeless person occupying the public toilet facility
Public safety	Public safety must be ensured	Public safety was not ensured	1 grief point for public safety incident reported
Nearby play area and benches	The nearby play area or benches must be kept clean and clear of sand	The nearby play area or benches were not kept clean / clear of sand	1 grief point for each bench or piece of equipment not kept clean and free of sand
Play equipment and notice boards	The play equipment and notice boards must be maintained	The play equipment and notice boards were not maintained	1 grief point for each play equipment or notice board not maintained
Six-monthly maintenance expenditure report	The status on maintenance expenditure must be submitted	Failed to submit completed six-monthly status report on maintenance expenditure	1 grief point for each month the six-monthly status report on maintenance expenditure is late or incomplete
Busses illegally parked	Busses must move out of the "drop off and collect area"	Busses failed to move out of the "drop off and collect area"	1 grief point for each bus that failed to timeously move out of the "drop off and collect area"
Busses parking	Busses must park in the designated area	Busses failed to park in the designated area	1 grief point for each bus failing to park in the designated area
Food rating	Food rating must be improved	Food rating on zomato.com less than 3 (three)	1 grief point for each tenth of a point below 3 (three)
Outsourced food preparation	If food preparation is outsourced, it must be within the Fish Hoek Valley	Food preparation outsourced beyond Fish Hoek Valley	1 grief point for each delivery of food from outside the Fish Hoek Valley

### **Mandatory Section**

It is required that all bidders must submit a full-term capital and operating budgeted maintenance plan with this tender with on-going six-monthly status reports required by the City detailing actual expenditure incurred and expenditure projected over the next six months. This plan needs constant updating throughout the entire lease period. A failure to provide

such a plan would result in the tenderer being immediately disqualified from any further consideration of award.

A “tour coach” parking management plan must be included with this tender submission to include the redesign of the current area reserved for coaches for general parking and is to include the dropping off passengers, then moving to the vicinity of the public ablution block at the north end of the life savers clubhouse. Later, the busses can collect their passengers at the “drop off and collect area”.

#### **Functionality Section (100%)**

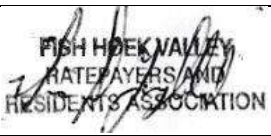
<b>Criteria</b>	<b>Weighting</b>	<b>Scoring</b>
Prior experience in managing a similar “seaside village type” restaurant	25	10 years of seaside village restaurant experience = 25 points 5 years of seaside village restaurant experience = 10 points 1 year of restaurant experience = 1 point
Financial sustainability	20	Three recent audited years showing increasing bottom line profit = 20 points Two consecutive years increasing profit = 10 points One year in profit = 1 point
Capital and operating budgeted maintenance expenditure plan	15	Best comparative plan of all bidders = 15 points Next best comparative plan = 10 points Worst plan = 5 points
Tour coach parking management plan	10	Best comparative plan of all bidders = 10 points Next best comparative plan = 5 points Worst plan = 5 points
Any other improvements offered	10	The artificial grassing of the “grassed” area to the south of line LK = 2 points + replacement of damaged catwalk and other benches = 3 points + replacement of stairway to Skellies pool = 3 points + the erection of a wind barrier along the line of old bathing boxes in the form of silhouettes of demolished bathing boxes = 2 points
Other social support	10	Best comparative plan of all bidders = 10 points Next best comparative plan = 7 points Third best plan = 5 points
Other beach management support	10	Funding of three full-time additional security staff for patrolling of the restaurant precinct, the greater beachfront and cat walk = 10 points Funding for two full-time = 5 points Funding for one or part-time = 1 point

Minimum functionality score of 65 being required before considering Financial Scoring.

#### **Financial Scoring**

BBBEE certified status	10% (due to the expected income and value of property)
Tendered lease amount	90%



<b>NAME &amp; SURNAME</b>	Brian Youngblood, Chair: Fish Hoek Valley Ratepayers and Residents Association (FHVRA)
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<b>SIGNATURE</b>	 FISH HOEK VALLEY RATEPAYERS AND RESIDENTS ASSOCIATION
<b>DATE</b>	4 May 2018

**Annexure A: LIS 1721v0**

